UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WELLS ENTERPRISES, INC. Respondent and NEAL THOMAS KRUCKENBERG, AN INDIVIDUAL Charging Party and UNITED DAIRY WORKERS OF LE MARS Party In Interest	Case 18-CA-150544 Case 18-CB-153774 **RESPONDENT WELLS ENTERPRISES, INC.'S STATEMENT OF POSITION IN RESPONSE TO CHARGING PARTY NEAL KRUCKENBERG'S MOTION FOR EXPEDITED DETERMINATION BY THE NATIONAL LABOR RELATIONS BOARD**
UNITED DAIRY WORKERS OF LE MARS Respondent and NEAL THOMAS KRUCKENBERG, AN INDIVIDUAL Charging Party and WELLS ENTERPRISES, INC. Party In Interest	

I. INTRODUCTION:

On December 1, 2016, counsel for Charging Party Neal Thomas Kruckenberg ("Charging Party") served a Motion for Expedited Determination ("Motion") regarding the above-captioned cases. Respondent Wells Enterprises, Inc. ("Wells") submits this Statement of Position ("Statement") in response to the Charging Party's Motion. Charging Party's Motion is replete with entirely unsupported allegations, inaccurate allegations, and other inaccurate or entirely unsupported conclusions which must be addressed by this Statement, and ultimately disregarded. While Wells endorses the National Labor Relations Board's ("Board") expeditious, orderly review of Wells' exceptions and related briefing, as well as those of the United Dairy Workers of Le Mars, Wells respectfully requests that the Board neither adopt nor rely upon the substance reflected in the Charging Party's Motion.

The Respondent further respectfully requests that the Board review and act upon Charging Party's Motion, to the extent that the Board's evaluation and decision regarding ALJ Fine's erroneous Decision and Recommended Order ("the ALJ's Decision") may be completed without compromising the Board's careful evaluation of the facts, law, and Wells' legal arguments regarding the Charging Party's claims against Wells and the United Dairy Workers of Le Mars.

The Board should not, however, allow itself to be rushed by the Charging Party's Motion, at the expense of the Board's orderly and thoughtful evaluation of the parties' respective claims, defenses, facts, and applicable law. Were the Board to act otherwise, it would be at the expense of an employer (Wells), a labor organization (the United Dairy Workers of Le Mars), and approximately 1,500 United Dairy Workers of Le Mars represented employees who look to and rely upon the United Dairy Workers of Le Mars for representation.

II. SALIENT ASPECTS OF PROCEDURAL HISTORY:

The above-captioned cases have long histories which are clear from the record before the Board, and which Wells need not review in detail in the context of this Statement. Nevertheless, as the Board considers the Charging Party's Motion, it is important for the Board to understand that Wells and the labor organization (the United Dairy Workers of Le Mars) which represents Wells' production employees have had a collective bargaining relationship for many years. Furthermore, as detailed in Wells' Brief and Reply Brief in Support of Its Exceptions to the ALJ's Decision, it is critical that the Board acknowledge that in 2005, an individual filed an unfair labor practice charge against Wells (NLRB Case No. 18-CA-17549) through which the charging party in that case challenged the relationship between Wells and the United Dairy Workers of Le Mars. On July 8, 2016, counsel for Wells submitted an affidavit and supporting exhibits, to the Board, with respect to NLRB Case No. 18-CA-150544. Those supporting exhibits included the decisions of the then Acting Regional Director for Region 18, and the Office of Appeals, denying the unfair labor practice charge in that case (18-CA-17549), which essentially challenged the same aspects of Wells' relationship with the United Dairy Workers of Le Mars challenged by the Charging Party in the above-captioned matter, filed approximately 10 years later.

The Board should also note that the Charging Party has brought his Motion almost exactly one year after the General Counsel served his complaint in NLRB Case No. 18-CA-150544 and almost six months after ALJ Fine issued his Decision and Recommended Order, which both Wells and the United Dairy Workers of Le Mars have appealed to the Board. Despite the passage of time as just summarized, the Charging Party now brings his Motion.

III. RESPONDENT'S POSITION REGARDING CHARGING PARTY'S MOTION:

The Board rules and case law require that factual allegations made in briefs filed with the Board be factually supported in the record and not mischaracterized. *See, e.g.,* Board Rule § 102.46; *T-West Sales & Service, Inc. d/b/a Desert Toyota v. Int'l Ass'n of Machinists & Aerospace Workers, Local Lodge 845, AFL-CIO*, 346 NLRB 110, 115 (2005) ("[F]actual assertions made in a brief must accurately refer to evidentiary support in the record."); *Int'l Union of Elevator Constructors, Local Union No. 131, AFL-CIO (Schindler Elevator Corp.)*, 2009 WL 971458, at n.24 (NLRB 2009) ("[F]actual assertions made in briefs must accurately reflect record evidence."); *Paratransit Services, Inc.*, 2014 WL 7429232, at § F(ii)(a) (NLRB 2014) ("The facts in this record simply do not support such a conclusion and to reach such would require the assumption of facts which do not appear in the record."). The Charging Party's Motion does not satisfy those requirements. Instead, it reflects both allegations that are not supported by the record, and allegations which mischaracterize the record.

For purposes of this Statement only, Wells will not dispute the assertions reflected in Paragraph Nos. (1), (2), and (3) of the Charging Party's Motion. Paragraph (4) of that Motion purports to recite allegations from what the Motion describes as "two new charges." As of the date of that Motion, the Regional Director for Region 18 of the National Labor Relations Board had not served copies of those "two new charges" upon Wells.

Paragraph (4) of the Motion reflects allegations which are entirely inaccurate. Merely by way of example, paragraph (4) alleges that "[t]he negotiation of a new collective bargaining agreement by a minority union ...". The Motion's characterization of the United Dairy Workers of Le Mars as a "minority union" is wholly unsupported by any evidence in the record, and is entirely inaccurate. The Motion also alleges "[t]he payment by the employer of the full expenses of the union so as to effectuate significant assistance and domination of the minority union...".

Again, the Motion reflects allegations regarding which there is no record evidence, and which Wells believes to be factually meritless.

Finally, the Motion goes on to allege that "[t]he Employer's and Union's actions were done with the intent to block Section 7 rights of self-determination while the Board was deciding the case and while the Circuit Court of Appeals was reviewing the appeal of the Board's decision." The foregoing propositions are wholly meritless. First, Wells in no way acted with any intent to deny any Wells employee their rights under Section 7 of the Act. Second, the Motion alleges that Wells engaged in the conduct "...and while the Circuit Court of Appeals was reviewing the appeal of the Board's decision." Wells has not undertaken any appeal to a United States Court of Appeals. The foregoing allegation clearly illustrates the lack of merit to the Motion. Wells cannot and has not appealed any Board decision to the Court of Appeals. The Charging Party does a disservice to the Parties and the Board when he makes such unsupported and inaccurate allegations.

Finally, the Motion alleges that "[t]he Employer and Union estimated the process would take up to four (4) years during which there would be a contract bar to a self-determination election." The Motion lacks any citation to authority to support that proposition. The absence of citation to support that proposition is however, not surprising, given that there is no support for such a proposition. The Charging Party's entirely speculative prognosis regarding the future of the above-captioned cases should be entirely dismissed for purposes of the Motion.

IV. CONCLUSION:

The National Labor Relations Act establishes a structure for the litigation of alleged unfair labor practices. It is important to note that Wells has simply exercised its rights, as established by the Act, to defend itself against Mr. Kruckenberg's unfair labor practice charges.

That includes having filed exceptions, which are currently pending before the Board, to the ALJ's Decision.

The Respondent respectfully requests that the National Labor Relations Board proceed to evaluate and decide the above-captioned cases in accordance with the Board's policies, procedures, and standards, and not at the expense of a full and fair evaluation of an extensive record regarding a dispute that has in effect been pending in various National Labor Relations Board cases for more than ten years.

Date: December 9, 2016

FOX ROTHSCHILD LLP

By: _____
Robert C. Castle
Elizabeth A. Patton

Campbell Mithun Tower, Suite 2000
222 South Ninth Street
Minneapolis, MN 55402-338
Telephone: (612) 607-7000
Facsimile: (612) 607-7100
Email: rcastle@foxrothschild.com
epatton@foxrothschild.com

ATTORNEYS FOR RESPONDENT WELLS ENTERPRISES, INC.

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WELLS ENTERPRISES, INC. Respondent and NEAL THOMAS KRUCKENBERG, AN INDIVIDUAL Charging Party and UNITED DAIRY WORKERS OF LE MARS Party In Interest	Case 18-CA-150544 Case 18-CB-153774
UNITED DAIRY WORKERS OF LE MARS Respondent and NEAL THOMAS KRUCKENBERG, AN INDIVIDUAL Charging Party and WELLS ENTERPRISES, INC. Party In Interest	

CERTIFICATE OF SERVICE

I, MaryJo Brinkman-Schill, certify that a copy of Respondent Wells Enterprises, Inc.'s Statement of Position in Response to Charging Party Neal Kruckenberg's Motion for Expedited

Determination by the National Labor Relations Board was electronically served on December 9, 2016, upon the following counsel for the parties:

Benjamin Mandelman, Esq.
National Labor Relations Board
Subregion 30
310 West Wisconsin Avenue, Suite 450W
Milwaukee, WI 63203-2246
Email: Benjamin.mandelman@nlrb.gov

ATTORNEY FOR NATIONAL LABOR RELATIONS BOARD

M. H. Weinberg, Esq.
Weinberg & Weinberg, P.C.
9290 W Dodge Rd., Ste. 205
Omaha, NE 68114-3320
Email: wmh9642@gmail.com

ATTORNEY FOR
NEAL KRUCKENBERG

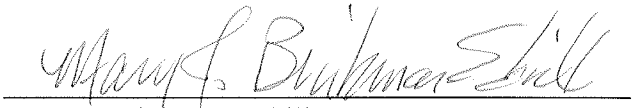
Daniel L. Hartnett, Esq.
Crary Huff
614 Pierce St.
P.O. Box 27
Sioux City, IA 51101
Email: dhartnett@craryhuff.com

ATTORNEY FOR UNITED DAIRY WORKERS OF LE MARS

Marlin O. Osthus
Regional Director
National Labor Relations Board
Federal Office Building
212 3rd Ave. S., Ste. 200
Minneapolis, MN 55401
Email: Marlin.Osthus@nlrb.gov

NATIONAL LABOR RELATIONS BOARD, REGION 18

Dated this 9th day of December, 2016.



MaryJo Brinkman-Schill
FOX ROTHSCHILD LLP
Campbell Mithun Tower, Suite 2000
222 South Ninth Street
Minneapolis, MN 55402-3338
Telephone: 612-607-7000
Facsimile: 612-607-7100